**Our File:** 

**AGREEMENT FOR LOCATING (HYDROVAC)**

**UNDERGROUND UTILITY LINE(S)**

**WITHIN PROVINCIAL HIGHWAY RIGHT-OF-WAY**

BETWEEN

His Majesty the King in right of Alberta

as represented by the Minister of Transportation and Economic Corridors

**(Hereinafter called the "Minister")**

-  and  -

     , in the Province of Alberta

**(Hereinafter called the "Operator")**

WHEREAS the Minister intends to make improvements to a roadway known as **Highway**  which may result in a ground disturbance for the purpose of locating the Operator’s utility line(s) within the highway right-of-way at the land legally described as:

Legal Land Description

as shown on the attached Plan Shown in Schedule A**.**

AND WHEREAS the Operator’s utility lines exists within Highway       right-of-way under the authority of a permit from the Minister;

AND WHEREAS the Minister requires access to the Operator’s utility line(s) as part of the work described above.

NOW THEREFORE, pursuant to the applicable section of the *Highways Development and Protection Act* (Alberta), the *Canadian Energy Regulator Act,* the *Pipeline Act* (Alberta), the *Water, Gas and Electric Company Act* (Alberta), the *Gas Distribution Act* (Alberta) and the *Occupational Health and Safety Act* (Alberta) (hereinafter called the "Acts"), the Minister and the Operator agree as follows:

1. The Operator's representative shall be:

Name

Telephone Number

Mailing Address

1. The Minister's representative shall be:

Name

Telephone Number

Mailing Address

1. The Minister (or his delegate) shall contact the Operator at least seventy-two (72) hours (excluding Saturdays, Sundays, and Statutory Holidays) prior to undertaking any ground disturbance within five (5) metres of the Operator’s utility line(s).  The Operator, upon receiving such notice, shall ensure that it is present at the site and shall witness the exposure of the Operator's utility line(s).  No excavation or construction of any sort shall be carried out until the Operator's representative is present at the site and has authorized same unless the Operator has advised otherwise by written notice to the Minister.

1. The Operator’s representative shall locate, inspect, mark the horizontal position of the Operator's utility line(s), direct and supervise a ground disturbance as requested by the Minister without charging any fee to the Minister undertaking the ground disturbance.

1. The Operator’s utility line(s) shall be exposed by a method acceptable to the Operator (such as hand digging, excavation by water or air jets), to determine the exact location and depth of cover of the utility line(s) prior to any mechanical excavation.  The cost of this exposure shall be borne by the Minister.  The Operator shall have the authority to stop the Minister’s work at any time due to safety or environmental concerns, unforeseen circumstances, or emergency events.

1. The Minister shall ensure the utility line exposure work to be conducted by a qualified and competent party. The Minister agrees to require that the party performing the utility line exposure work shall fulfill the responsibilities and duties of the Prime Contractor as set out in the *Occupational Health and Safety Act (*Alberta), as amended, and any regulations made pursuant to that Act.  The Minister agrees that in no circumstance shall the Operator be, or be deemed to be, the Prime Contractor over the work site related to the utility line exposure work or the utility line exposure work contemplated hereunder unless the Minister and the Operator enter a separate written agreement whereby the Operator agrees to be designated as the Prime Contractor.

If the utility line exposure work is of such a kind as to fall within the purview of the *Canadian Energy Regulator Act*, the Minister agrees to require its employees, contractors, and agents to carry out the work in accordance with the Canada Labour Code R.S.C*.*

The Minister shall ensure that that it, its contractors, including the Prime Contractor, follow all applicable occupational health and safety laws in respect of the work site and the performance of the work. Notwithstanding anything contained herein, Operator’s attendance on-site to ensure compliance with any conditions or provision set out in this agreement shall not be interpreted as constituting or creating any assignment of the Minister’s responsibilities at law or under the agreement. Operator’s on-site attendance to observe the exposure of the Operator’s utility line(s) by the Minister or Operator’s decision to stop work in accordance with section 5 shall not relieve the Minister’s or its designated Prime Contractor from their respective responsibilities and obligations, including prime contractor responsibilities, under applicable occupational health and safety legislation.

1. The Minister shall carry out all work in accordance with good engineering and relevant Acts.

1. The Minister shall ensure that no equipment, material, or vehicles will be stored, parked, or driven over or along the Operator’s utility line(s)except as reasonably necessary in the actual exposure.

1. If any excavation *o*r construction equipment is to be moved across the Operator’s utility line(s), prior to the exposure of the utility line(s), the Operator may require direct protective measures, in accordance with good engineering and construction practices, and in accordance with the relevant Acts*,* to be placed across the Operator's utility line(s) at the point of crossing, the cost of which shall be borne by the Minister.

1. The Minister agrees to indemnify and hold harmless the Operator, its employees, and agents against and from any and all third party claims, demands, actions, or costs (including legal costs on a solicitor-client basis) to the extent arising from:

1. the Minister’s breach of this Agreement, or

1. the negligence, other tortious act or wilful misconduct of the Minister, or those for whom the Minister is legally responsible, in relation to the performance of its obligations under this Agreement.

This hold harmless provision shall survive this Agreement.

1. Any written notice required or permitted hereunder shall be directed to the party to whom it will be given (hand delivered, sent by prepaid mail, or sent by telecommunication), addressed as follows:

**(a)** **To the Minister:**

Name, Construction Manager, Region

Mailng Address

**(b)** **To the Operator:**

  Name, Title

Mailng Address

And in the event of mail service disruption, such notice shall be delivered by hand.

1. Where the terms and conditions in this document contradict any portion of the Acts, the latter shall prevail.

1. This agreement shall be governed and construed in accordance with the laws of the Province of Alberta and the laws of Canada applicable therein.

1. The Minister shall not assign this agreement without first obtaining the written consent of the Operator which shall not be unreasonably withheld.

1. This agreement shall enure to the benefit of and be binding upon the parties, their successors and permitted assigns.

1. This agreement constitutes the entire agreement between the Minister and the Operator relating to the subject matter described herein.  There are no representations, collateral agreements, or warranties between the Minister and Operator that are not contained in this agreement.

1. No change, modification, amendment, or alteration of this agreement shall be valid unless it is in writing and signed by the authorized representative(s) of the parties hereto.

1. This agreement may be executed in any number of counterparts, and may be delivered originally or by Portable Document Format (“PDF”) and each such original, or PDF copy, when so executed and delivered shall be deemed to be an original and all of which taken together shall constitute one and the same instrument.

1. The terms and conditions of this agreement shall be effective from latest date upon which both the Minister and Operator executes this Agreement, as is set forth below.

1. This agreement expires on Date unless extension is mutually agreed between the Operator and the Minister.

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| --- | --- | --- | --- | --- |
| **Executed on behalf of the**  **Operator by:** | |  | **Executed on behalf of the**  **Minister by:** | |
|  | |  |  | |
| Name: |  |  | Name: |  |
| Title: |  |  | Title: |  |
| Date: |  |  | Date: |  |